

**DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

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**NOTICE OF FINAL RULEMAKING**

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in Section 2 of the Insurer Confidentiality and Information Sharing Act of 2000, effective October 21, 2000 (D.C. Law 13-191, 47 DCR 7311) hereby gives notice of the adoption of the following regulations to be included in Title 26, Chapter 36 of the District of Columbia Municipal Regulations (DCMR). The regulations govern the treatment of nonpublic personal financial information about consumers and customers by insurers, insurance agents and brokers licensed in the District; require insurers, insurance agents and brokers to provide notice to consumers about their privacy policies and practices; describe the conditions under which an insurer, insurance agent, or broker may disclose nonpublic personal information about consumers to nonaffiliated third parties; and provide a method for consumers to prevent an insurer, insurance agent or broker from disclosing that information to most nonaffiliated third parties by “opting out” of that disclosure, subject to certain exceptions in these regulations. These regulations were adopted on an emergency basis because Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 imposes a November 13, 2000 deadline for state regulators to adopt insurance privacy regulations and if such regulations are not adopted by November 13, 2000, the District of Columbia will not be able to participate in the consumer privacy reforms enacted in Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 thereby creating uncertainty in the protection of consumer financial information.

This Notice of **Final** Rulemaking supercedes the notice as published in the Notice of **Emergency and** Proposed Rulemaking in the D.C. Register on **July** 6, 2001 at 48 DCR **6119**.

26 DCMR is amended by adding a new Chapter 36, Privacy of Consumer Financial Information, to read as follows:

**CHAPTER 36**

**PRIVACY OF CONSUMER FINANCIAL INFORMATION**

**3600            APPLICABILITY**

3600.1            These regulations shall apply to the treatment of nonpublic personal information about individuals who obtain products or services from licensees primarily for personal, family, or household purposes.

3600.2            These regulations shall not apply to information about companies or individuals who obtain products or services for business, commercial, or agricultural purposes.

- 3600.3 These regulations shall not apply to the treatment of nonpublic personal health information about individuals who obtain products or services from licensees.
- 3600.4 A licensee domiciled in the District of Columbia that is in compliance with this regulation in a jurisdiction that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in the other jurisdiction.
- 3600.5 The examples in this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

**3601 INITIAL PRIVACY NOTICE TO CONSUMERS REQUIRED**

- 3601.1 A licensee shall provide a clear and conspicuous notice that accurately reflects the licensee's privacy policies and practices to:
- (a) Any person who becomes a licensee's customer, not later than when the time that the licensee establishes a customer relationship, except as provided in § 3601.6; and
  - (b) A consumer, before a licensee discloses any nonpublic personal information about the consumer to any nonaffiliated third party, if a licensee makes such a disclosure other than as authorized by §§ 3607 and 3608.
- 3601.2 A licensee is not required to provide an initial notice to a consumer under § 3601.1(b) if:
- (a) The licensee does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 3607 and 3608; and
  - (b) The licensee does not have a customer relationship with the consumer.
  - (c) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.
- 3601.3 A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.
- 3601.4 A licensee establishes a customer relationship when the consumer:

- (a) Agrees to obtain insurance related financial, economic or investment advisory services from the licensee for a fee; or
- (b) Becomes a policyholder of the licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee.

3601.5 A licensee shall provide the privacy notice when required by § 3601.1(b) so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.

3601.6 A licensee may provide the initial notice required by § 3601.1 within a reasonable time after the licensee establishes a customer relationship if:

- (a) A licensee purchases the right to the continuing income from an insurance policy or assumes a policy from another insurer and the customer of that policy does not have a choice about the purchase or assumption; or
- (b) A licensee and the consumer orally agree to enter into a customer relationship and the consumer agrees to receive the notice thereafter.

3601.7 A licensee may not satisfy the initial notice requirement of § 3601.1 solely by orally explaining, either in person or over the telephone, the privacy policies and practices.

3601.8 For customers only, a licensee shall provide the initial notice required by § 3601.1 so that it can be retained or obtained at a later time by the customer, in a written form or, if the customer agrees, in electronic form.

3601.9 A licensee may reasonably expect that a consumer will receive actual notice of the licensee's privacy policies and practices if the licensee:

- (a) Hand-delivers a printed copy of the notice to the consumer;
- (b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing, or other written documentation; or
- (c) For the consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service.

3601.10 A licensee may not, however, reasonably expect that a consumer will receive actual notice of the licensee's privacy policies and practices if the licensee:

- (a) Only posts a sign in the licensee's branch or office or generally publishes advertisements of its privacy policies and practices; or
- (b) Sends the notice via electronic mail to a consumer who obtains a financial product or service with the licensee in person or through the mail and who does not agree to receive the notice electronically.

3601.11 A licensee or its affiliate provides the initial privacy notice to the customer so that it can be retained or obtained at a later time if the licensee,

- (a) Hand-delivers a printed copy of the notice to the customer;
- (b) Mails a printed copy of the notice to the last known address of the customer; or
- (c) Maintains the notice on a web site (or makes the notice available on a link to another web site) for the customer who obtains a financial product or service electronically and who agrees to receive the notice electronically.

3601.12 The licensee shall have presented the information in the notice required in this section in clear, concise sentences, paragraphs and sections, if the notice is written:

- (a) Using short explanatory sentences or bulleted lists, whenever possible;
- (b) Using definite, concrete, everyday words and active voice whenever possible;
- (c) Avoiding the use of multiple negatives;
- (d) Avoiding the use of legal and highly technical business terminology whenever possible; and
- (e) Avoiding the use of boilerplate explanations that are imprecise and readily subject to different interpretations.

3601.13 A licensee shall have designed its notice to call attention to the nature and significance of the information contained in the notice, if the notice is written:

- (a) Using a plain-language heading to call attention to the notice;
- (b) Using a typeface and type size that are easy to read; and
- (c) Providing wide margins and ample line spacing.

3601.14 If a licensee provides a notice on the same form as another notice or other document,

it shall have designed the notice to call attention to the nature and significance of the information contained in the notice, if the notice is written using:

- (a) Larger type size, boldface or italics in the text;
- (b) Wider margins and line spacing in the notice; and
- (c) Shading or sidebars to highlight the notice, whenever possible.

3601.15 If a licensee provides a notice on a web page, it shall have designed the notice to call attention to the nature and significance of the information contained in the notice, if the notice is written:

- (a) Using text or visual cues to encourage scrolling down the page if necessary to view the entire notice;
- (b) Ensuring that other elements on the web site such as text, graphics, hyperlinks, or sound do not distract attention from the notice; and
- (c) Placing the notice on a screen that consumers frequently access, such as a home page or a page on which transactions are conducted; or
- (d) Placing a link on a screen that consumers frequently access, such as a home page or a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

3601.16 (a) A licensee may satisfy the initial notice requirements in §§ 3601.1 (b) and 3605.7 for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required by § 3605.

(b) A short-form notice shall:

- (1) Be clear and conspicuous;
- (2) State that the licensee's privacy notice is available on request; and
- (3) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short form initial notice in the same manner as an initial or annual notice. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply

provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver it in the same manner as applicable for an initial or annual notice.

- (d) The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:
  - (1) Provides a toll-free telephone number that the consumer may call to request the notice; or
  - (2) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

## **3602 ANNUAL PRIVACY NOTICE TO CUSTOMERS REQUIRED**

- 3602.1 A licensee shall provide a clear and conspicuous notice to all customers for whom the licensee possesses the name and address that accurately reflects the licensee's privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once during any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.
- 3602.2 A licensee shall provide the annual notice required by § 3602.1 to a customer using a means permitted for providing the initial notice to that customer under § 3601.
- 3602.3 A licensee is not required to provide an annual notice to a customer with whom it no longer has a continuing relationship.
- 3602.4 A licensee no longer has a continuing relationship with an individual if:
  - (a) The insurance policy has been declared dormant under the insurance company's policies;
  - (b) The licensee sells the insurance policy without retaining any continuing income;
  - (c) The licensee no longer provides any statements or notices to the consumer concerning that relationship;
  - (d) For other types of relationships, a licensee has not communicated with the consumer about the relationship for a period of 12 consecutive months, other than to provide annual notices of privacy policies and practices;

- (e) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful; or
- (f) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

3602.5 The licensee shall have presented the information in the notice required in this section in clear, concise sentences, paragraphs and sections, if the notice is written:

- (a) Using short explanatory sentences or bulleted lists, whenever possible;
- (b) Using definite, concrete, everyday words and active voice whenever possible;
- (c) Avoiding the use of multiple negatives;
- (d) Avoiding the use of legal and highly technical business terminology whenever possible; and
- (e) Avoiding the use of boilerplate explanations that are imprecise and readily subject to different interpretations.

3602.6 A licensee shall have designed its notice to call attention to the nature and significance of the information contained in the notice, if the notice is written:

- (a) Using a plain-language heading to call attention to the notice;
- (b) Using a typeface and type size that are easy to read; and
- (c) Providing wide margins and ample line spacing.

3602.7 If a licensee provides a notice on the same form as another notice or other document, it shall have designed the notice to call attention to the nature and significance of the information contained in the notice, if the notice is written using:

- (a) Larger type size(s), boldface or italics in the text;
- (b) Wider margins and line spacing in the notice; and
- (c) Shading or sidebars to highlight the notice, whenever possible.

3602.8 If a licensee provides a notice on a web page, it shall have designed the notice to call attention to the nature and significance of the information contained in the notice, the notice is written:

- (a) Using text or visual cues to encourage scrolling down the page if necessary to view the entire notice;
- (b) Ensuring that other elements on the web site such as text, graphics, hyperlinks, or sound do not distract attention from the notice; and
- (c) Placing the notice on a screen that consumers frequently access, such as a home page or a page on which transactions are conducted; or
- (d) Placing a link on a screen that consumers frequently access, such as a home page or a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

3602.9 The annual notice required under this section may be provided by an affiliate as long as the notice clearly identifies all licensees or affiliates to which the notice applies, and complies with all other provisions of these regulations.

### **3603 INFORMATION TO BE INCLUDED IN PRIVACY NOTICES**

3603.1 The initial, annual and revised privacy notices that a licensee provides about its privacy policies and practices under §§ 3601 and 3602 shall include each of the following items of information:

- (a) The categories of nonpublic personal information that the licensee collects;
- (b) The categories of nonpublic personal information that the licensee discloses;
- (c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information, other than those parties to whom the licensee discloses information under §§ 3607 and 3608;



- (d) The categories of nonpublic personal information about the licensee's former customers that it discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information about its former customers, other than those parties to whom it discloses information under §§ 3607 and 3608;
- (e) If a licensee discloses nonpublic personal information to a nonaffiliated third party under § 3606 (and no other exception applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;
- (f) An explanation of the right under §§ 3604.1 through 3604.4 of the consumer to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;
- (g) Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates); and
- (h) The licensee's policies and practices with respect to protecting the confidentiality, and security of nonpublic personal information.

3603.2 If a licensee discloses nonpublic personal information about a consumer to third parties as authorized under §§ 3607 and 3608, the licensee is not required to list those exceptions in the initial or annual privacy notices required by §§ 3601 and 3602. When describing the categories with respect to those parties to whom disclosure is made, a licensee is only required to state that it makes disclosures to other nonaffiliated third parties as permitted by law.

3603.3 A licensee's notice may include:

- (a) Categories of nonpublic personal information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
- (b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal information.

3603.4 A licensee adequately categorizes the nonpublic personal information it collects if the licensee categorizes it according to the source of the information, such as application information, information about transactions such as information

regarding its financial product or service and consumer reports.

- 3603.5 A licensee adequately categorizes nonpublic personal information it discloses if the licensee categorizes the information according to source, and provides a few illustrative examples of the content of the information. These might include application information, such as assets and income; identifying information, such as name, address, and social security number; and transaction information, such as information about account balance, payment history, parties to the transaction, and information from consumer reports, such as a consumer's creditworthiness and credit history. The licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.
- 3603.6 A licensee adequately categorizes the affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information about consumers if the licensee identifies the types of businesses that they engage in. Types of businesses may be described by general terms only if it uses a few illustrative examples of significant lines of business. For example, the licensee may use the term insurance products or services if it includes appropriate examples of significant lines of businesses, such as auto and homeowner's insurance, annuities, and life insurance. A licensee also may categorize the affiliated and nonaffiliated third parties to whom it discloses nonpublic personal information about consumers using more detailed categories.
- 3603.7 If a licensee does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, except as authorized under §§ 3607 and 3608, the licensee may simply state that fact, in addition to the information the licensee shall provide under §§ 3603.1(a), 3603.1(h), and 3603.2.
- 3603.8 A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if the licensee describes sufficiently who is authorized to have access to the information and the circumstances under which the information may be accessed. A licensee describes its policies and practices with respect to protecting the integrity of nonpublic personal information when the licensee discloses the measures it takes to protect against reasonably anticipated threats or hazards. A licensee is not required to describe technical information about the safeguards it uses.
- 3603.9 A licensee may satisfy the initial notice requirements in §§ 3601 and 3605.7 for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt notice as required in § 3605.
- 3603.10 A short-form notice shall:

- (a) Be clear and conspicuous;
- (b) State that the licensee's privacy notice is available upon request; and
- (c) Explain a reasonable means by which the consumer may obtain that notice.

3603.11 The licensee shall deliver its short-form initial notice according to § 3605. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer with a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to § 3605.

3603.12 The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

- (a) Provides a toll-free telephone number that the consumer may call to request the notice; or
- (b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

#### **3604 LIMITATION ON DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION ABOUT CONSUMERS TO NONAFFILIATED THIRD PARTIES**

3604.1 Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

- (a) The licensee has provided to the consumer an initial notice as required under § 3601;
- (b) The licensee has provided to the consumer an opt out notice as required in § 3605;
- (c) The licensee has given the consumer a reasonable opportunity, before the time that it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- (d) The consumer does not opt out.

3604.2 Opt out means a direction by the consumer that the licensee shall not disclose

nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 3606, 3607 and 3608.

- 3604.3 A licensee provides a consumer with a reasonable opportunity to opt out if the licensee mails the notices required in § 3604.1 to the consumer and allows the consumer to opt out by mailing the form, calling a toll free number or any other reasonable means within a minimum of 30 days from the date the licensee distributed the notice.
- 3604.4 For an isolated transaction, such as the purchase of travel insurance for a single trip, or providing the consumer with an insurance quote, the licensee provides a reasonable opportunity to opt out if it provides the consumer with the required notices at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.
- 3604.5 A licensee shall comply with the applicable opt out requirements, regardless of whether the licensee and the consumer have established a customer relationship.
- 3604.6 Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that it has collected, regardless of whether the licensee collects it before or after receiving the direction to opt out from the consumer.
- 3604.7 A licensee may allow a partial opt out to a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.
- 3604.8 A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

## **3605 FORM AND METHOD OF PROVIDING OPT OUT NOTICE TO CONSUMERS; DELIVERY**

- 3605.1 If a licensee is required to provide an opt out notice under § 3604.1 through § 3604.4, the licensee shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under § 3604.1. The notice shall state:
- (a) That the licensee discloses or reserves the right to disclose nonpublic personal information about its consumer to a nonaffiliated third party;
  - (b) That the consumer has the right to opt out of that disclosure; and
  - (c) A reasonable means by which the consumer may exercise the opt out right.

- 3605.2 A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if the licensee identifies all of the categories of nonpublic personal information that the licensee discloses or reserves the right to disclose to nonaffiliated third parties as described in § 3603 and states that the consumer can opt out of the disclosure of that information.
- 3605.3 A licensee provides a reasonable means to exercise an opt out right if it:
- (a) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;
  - (b) Includes a reply form together with the opt out notice;
  - (c) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or
  - (d) Provides a toll-free telephone number that consumers may call to opt out.
- 3605.4 A licensee does not provide a reasonable means of opting out if the only means of opting out is for the consumer to write his or her own letter to exercise the opt out right.
- 3605.5 A licensee may not provide the opt out notice solely by orally explaining, either in person or over the telephone, the right of the consumer to opt out.
- 3605.6 A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice it provides in accordance with § 3601.
- 3605.7 If a licensee provides the opt out notice at a later time than required for the initial notice in accordance with § 3601, it shall also include a copy of the initial notice in writing or, if the consumer agrees, in an electronic form with the opt out notice.
- 3605.8 Except as otherwise authorized in this regulation, a licensee shall not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to the consumer under § 3601, unless:
- (a) A licensee has provided to the consumer a revised notice that accurately describes its policies and practices;
  - (b) A licensee has provided to the consumer a new opt out notice;

(c) A licensee has given the consumer a reasonable opportunity before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

3605.9 A licensee shall provide the revised notice of its policies and practices and opt out notice, if required under § 3605.8, to a consumer using the means permitted for providing the initial notice and opt out notice to that consumer under §§ 3601 and 3605, respectively.

3605.10 Except as otherwise permitted by §§ 3606, 3607 and 3708, a revised notice is required if the licensee:

(a) Discloses a new category of nonpublic personal information to any nonaffiliated third party; or

(b) Discloses nonpublic personal information to a new category of any nonaffiliated third party.

3605.11 A revised notice is not required if the licensee discloses nonpublic personal information to a new nonaffiliated third party that is adequately described by its prior notice.

3605.12 A consumer may exercise the right to opt out at any time, and the licensee shall comply with the consumer's direction as soon as reasonably practicable.

3605.13 A consumer's direction to opt out under this section is effective until revoked by the consumer in writing, or if the consumer agrees, in electronic form.

3605.14 If two or more consumers jointly obtain a financial product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer.

3605.15 Any of the joint consumers may exercise the right to opt out. The licensee may either:

(a) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(b) Permit each joint consumer to opt out separately.

3605.16 If the licensee permits each joint consumer to opt out separately, the licensee shall

permit one of the joint consumers to opt out on behalf of all the joint consumers.

3605.17 A licensee may not require all joint consumers to opt out before the licensee implements any opt out direction.

3605.18 For example, if John and Mary are both named insureds on an insurance policy with a licensee and arrange for the licensee to send all correspondence about the policy to John's address, the licensee may do any of the following, but the licensee shall explain in its opt out notice which opt out policy it will follow:

- (a) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary;
- (b) Treat an opt out direction by either John or Mary as applying to the entire account. If the licensee does so, and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction; or
- (c) Permit John and Mary to take different opt out directions. If a licensee does so, and both opt out, the licensee shall permit both to notify the licensee in a single response (such as on a form or through a telephone call). In addition, if John opts out but Mary does not, the licensee may disclose nonpublic personal information about Mary, but not about John and not about Mary and John jointly.

3605.19 A licensee shall provide any privacy notices and opt out notices, including short-form initial notices in § 3603.9, that this section requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

3605.20 A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

- (a) Hand-delivers a printed copy of the notice to the consumer;
- (b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
- (c) For the consumer who conducts transactions electronically, clearly and conspicuously posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or
- (d) For an isolated transaction with the consumer, such as the licensee providing

an insurance quote or selling the consumer travel insurance, requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

- 3605.21 A licensee may not reasonably expect that a consumer will receive actual notice of the licensee's privacy policies and practices if the licensee:
- (a) Only posts a sign in its branch or office or generally publishes advertisements of its privacy policies and practices; or
  - (b) Sends the notice via electronic mail to a consumer who does not obtain a financial product or service from the licensee electronically.
- 3605.22 A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:
- (a) The customer uses the licensee's web site to access financial products and services electronically and agrees to receive notices at the web site, and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
  - (b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.
- 3605.23 A licensee may not provide any notice required by § 3605 solely by orally explaining the notice, either in person or over the telephone.
- 3605.24 For customers only, a licensee shall provide the initial notice required by section 3601, the annual notice required by § 3602, and the revised notice required by § 3605.9, so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.
- 3605.25 The licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:
- (a) Hand-delivers a printed copy of the notice to the customer;
  - (b) Mails a printed copy of the notice to the last known address of the customer; or
  - (c) Makes the licensee's current privacy notice available on a web site (or link to another web site) for the customers who obtains a financial product or service electronically and agrees to receive the notice at the web site.



- 3605.26 A licensee may provide a joint notice from the licensee and one or more of the licensee's affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide notice on behalf of another financial institution.
- 3605.27 Producers may deliver any notice required under this regulation on behalf of another licensee. A producer shall not otherwise be subject to the requirements of this section in any instance where the insurer, including affiliates, on whose behalf the producer is acting otherwise complies with the requirements contained herein, and the producer does not disclose any financial information to any person other than the insurer or its affiliates in a manner permitted by this regulation.

**3606 EXCEPTION TO OPT OUT REQUIREMENTS FOR SERVICE PROVIDERS AND JOINT MARKETING**

3606.1 The opt out requirements in §§ 3604 and 3605 do not apply when a licensee provides nonpublic personal information about a consumer to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

- (a) Provides the initial notice in accordance with § 3601; and
- (b) Enters into a contractual agreement with the third party that:
  - (1) Requires the third party to maintain the confidentiality of the information to at least the same extent that the licensee shall maintain that confidentiality under these regulations; and
  - (2) Limits the third party's use of information the licensee discloses solely to the purposes for which the information is disclosed, or as otherwise permitted by §§ 3607 and 3608.

3606.2 The services performed for the licensee by a nonaffiliated third party under § 3606.1 may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

3606.3 For purposes of this section, joint agreement means a written contract pursuant to which the licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

**3607 EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS FOR PROCESSING AND SERVICING TRANSACTIONS**

3607.1 The requirements for initial notice to consumers in subsection 3601.1(b), the opt out notice in §§ 3604 and 3605 and service providers and joint marketing in § 3606 do not apply if the licensee discloses nonpublic personal information:

- (a) As necessary to effect, administer, or enforce a transaction requested or authorized by the consumer;
- (b) To service or process a financial product or service requested or authorized by the consumer;
- (c) To maintain or service the consumer's account with the licensee, or with another entity;
- (d) In connection with a proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or
- (e) Reinsurance, stop loss, or excess loss insurance.

3607.2 Necessary to effect, administer, or enforce a transaction means that the disclosure is:

- (a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (b) Required, or is a usual, appropriate or acceptable method:
  - (1) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;
  - (2) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
  - (3) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance service or insurance product to the consumer or the consumer's agent or broker;
  - (4) To accrue or recognize incentives or bonuses associated with the transaction that are provided by the licensee or any other party;
  - (5) To underwrite insurance at the consumer's request or for reinsurance

purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal, State, or District of Columbia law or regulation; or

- (6) In connection with settling a transaction, including:
  - (A) The authorization, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;
  - (B) The transfer of receivables, accounts or interests therein; or
  - (C) The audit of debit, credit or other payment information.

## **3608 OTHER EXCEPTIONS TO NOTICE AND OPT OUT REQUIREMENTS**

3608.1 The requirements for initial notice to consumers in § 3601.1(b), the opt out in §§ 3604 and 3605, and service providers and joint marketing in § 3606 do not apply when the licensee discloses nonpublic personal information:

- (a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (b)(1) To protect the confidentiality or security of the licensee's records pertaining to the consumer, service, product or transaction;
  - (2) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;
  - (3) For required institutional risk control or for resolving consumer disputes or inquiries;
  - (4) To persons holding a legal or beneficial interest relating to the consumer; or
  - (5) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

- (c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating the licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;
- (d) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including government regulators), self-regulatory organizations, or for an investigation on a matter related to public safety;
- (e)(1) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or
  - (2) From a consumer report reported by a consumer reporting agency;
- (f) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or
- (g)(1) To comply with Federal, State, District of Columbia or local laws, rules and other applicable legal requirements;
  - (2) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by Federal, State, District of Columbia or local authorities; or
  - (3) To respond to judicial process or government regulatory authorities having jurisdiction over the licensee for examination, compliance or other purposes as authorized by law.

3608.2 A consumer may specifically consent to a licensee's disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to the licensee for a financial service so that the unaffiliated insurance company can offer an insurance product loan to the consumer.

3608.3 A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 3605.13.

## **3609 LIMITS ON REDISCLOSURE AND REUSE OF INFORMATION**

3609.1 Except as otherwise provided in this regulation, if a licensee receives nonpublic personal information about a consumer from a nonaffiliated financial institution, the licensee shall not, directly or through an affiliate, disclose the information to any

other person that is not affiliated with either the financial institution or licensee, unless the disclosure would be lawful if the licensee made it directly to such other person.

3609.2 A licensee may disclose nonpublic personal information about a consumer that it receives from a nonaffiliated financial institution in accordance with an exception under §§ 3606, 3607 or 3608 only for the purpose of that exception.

3609.3 Except as otherwise provided in this regulation, if a licensee discloses nonpublic personal information about a consumer to a nonaffiliated financial institution, that party shall not, directly or through an affiliate, disclose the information to any other person that is a nonaffiliated third party of both the licensee and that party, unless the disclosure would be lawful if the licensee made it directly to such other person.

3609.4 A nonaffiliated third party may disclose nonpublic personal information about a consumer that it receives from the licensee in accordance with an exception under §§ 3606, 3607 or 3608 only for the purpose of that exception.

## **3610 LIMITS ON SHARING OF ACCOUNT NUMBER INFORMATION FOR MARKETING PURPOSES**

3610.1 A licensee shall not, directly or through an affiliate, disclose other than to a consumer reporting agency, an account number or similar form of access number or access code for consumer's credit card account, deposit account or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

3610.2 Section 3610.1 shall not apply if a licensee discloses an account number of similar form of access number or access code:

- (a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;
- (b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or
- (c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

3610.3 For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

3610.4 For purposes of section, a policy number or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or the code.

## **3611 PROTECTION OF FAIR CREDIT REPORTING ACT**

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under § 603 of that Act.

## **3612 GRANDFATHER PROVISION**

Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of § 3606.1(b) of the regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2001.

## **3613 Reserved**

## **3614 Definitions**

**Affiliate** means any company that controls, is controlled by, or is under common control with another company.

**Clear and conspicuous** means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

**Collect** means to obtain information that the licensee organizes or can retrieve on a personally identifiable basis, irrespective of the source of the underlying information.

**Company** means any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

**Consumer** means an individual who obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. Examples of a consumer includes:

- (a) An individual who provides nonpublic personal information in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service to be used primarily for personal, family or household purposes is a consumer regardless of whether the licensee establishes an ongoing relationship. However, such an individual is not a “consumer” if the nonpublic personal information obtained by the licensee is not otherwise used, compiled, or transferred.
- (b) An applicant for insurance prior to the inception of insurance coverage;
- (c) An individual who has an insurance policy even if the licensee:
  - (1) Hires an agent to collect on the policy,
  - (2) Sells the rights to service the insurance policy, or
  - (3) Bought the insurance policy from the company that originated the insurance policy.

An individual is a licensee’s consumer if:

- (a) (1) The individual is a beneficiary of a life insurance policy underwritten by the licensee;
- (2) The individual is a claimant under an insurance policy issued by the licensee;
- (3) The individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
- (4) The individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and
- (b) The licensee discloses nonpublic personal information about the individual other than as permitted under §§ 3606, 3607 and 3608 of this regulation.

An individual is not a consumer solely because the licensee processes information about the individual on behalf of a financial institution that issued the insurance policy to the individual.

An individual is not a consumer if the licensee provides benefits to the individual as beneficiary or participant of a commercial insurance policy, workers compensation policy professional liability insurance policy, an employee benefit plan, group or blanket insurance policy or group annuity contract.

**Consumer reporting agency** has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

**Control** of a company means:

- (a) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
- (b) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
- (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as determined by the Commissioner.

**Customer** means a consumer who has a customer relationship with a licensee. In no event, however shall a beneficiary or claimant under a policy of insurance solely by virtue of their status as a beneficiary or claimant, be deemed to be a customer for the purposes of this regulation.

**Customer relationship** means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. A consumer has a continuing relationship with a licensee if the consumer:

- (a) Is a current policyholder of an insurance product or other product from or through a licensee;
- (b) Holds an investment product through a licensee; or
- (c) Obtains financial, insurance, investment or economic advisory services from a licensee for a fee.

A consumer does not, however, have a continuing relationship with a licensee if:

- (a) The consumer only obtains an insurance policy or service in an isolated transaction, such as an inquiry about a claims handling phone number for an insurance policy not issued, sold, or supported in any way by a licensee;
- (b) A licensee sells the consumer's insurance policy and does not retain the rights to service the policy;
- (c) A licensee sells the consumer travel insurance in an isolated transaction;
- (d) A consumer applies for insurance, but does not purchase the insurance;
- (e) The consumer is a beneficiary or claimant under a policy and has submitted a claim



under a policy choosing a settlement option involving an ongoing relationship with a licensee;

- (f) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;
- (g) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;
- (h) The individual is an insured or annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity;
- (i) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful; or
- (j) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

**Financial institution** means any institution the business of which is engages in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S. C. 1843(k)).

Financial institution does not include:

- (a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the commodity Futures Trading Commission under the Commodity exchange Act (7 U.S. C. 1 et seq.);
- (b) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or
- (c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer personal information to an nonaffiliated third party.

**Financial product or service** means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity

under Section 4(k) of Bank Holding Company Act 1956 (12 U.S.C. § 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

**Financial service** includes a licensee's evaluation or brokerage of information that the licensee collects in connection with a request or an application from a consumer for a financial product or service.

**Health information** means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

- (a) The past, present or future physical, mental or behavioral health or condition of an individual;
- (b) The provision of health care to an individual; or
- (c) The payment of the provision of health care to an individual.

**Licensee** means all licensed insurers, producers, and other persons licensed or required to be licensed pursuant to the insurance laws and regulations of the District of Columbia.

- (a) A licensee is not subject to the notice and opt out requirements for nonpublic personal information set in this regulation if the licensee is an employee, agent or
- (b) other representative of another licensee ("the principal") and:
  - (1) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and
  - (2) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

**Nonaffiliated third party** means any person except:

- (a) The licensee's affiliate; or
- (b) A person employed jointly by the licensee and any company that is not the licensee's affiliate, but nonaffiliated third party includes the other company that jointly employs the person.

- (c) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

**Nonpublic personal health information** means health information:

- (a) That identifies an individual who is the subject of the information; or
- (b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

**Nonpublic personal information** means personally identifiable financial information and any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information other than publicly available information. Nonpublic personal information does not include:

- (a) Publicly available information, except as provided in this paragraph.
- (b) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information, other than publicly available information.
- (c) Health information.

Nonpublic personal information includes:

- (a) Any list of individuals' names and street addresses that is derived using personally identifiable financial information, other than publicly available information, such as account numbers.
- (b) Nonpublic personal information does not include any list of individual's names and addresses that contains only publicly available information, is not derived using personally identifiable financial information, other than publicly available information, either in whole or in part, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

**Personally identifiable financial information** means any information:

- (a) Provided by a consumer to a licensee to obtain an insurance product or service from the licensee;

- (b) About a consumer resulting from any transaction involving a financial products or service between a licensee and a consumer; or
- (c) A licensee otherwise obtains about a consumer in connection with providing a financial product or service to that consumer.
- (d) Personally identifiable financial information includes:
  - (1) Information a consumer provides to a license on an application to obtain and insurance or other financial product or service;
  - (2) Account balance information, payment history, and other payment information;
  - (3) The fact that an individual is or has been one or a licensee's customers or has obtained an insurance or other financial service from a licensee, unless that fact is derived using only publicly available information;
  - (4) Other information about the licensee's consumer if it is disclosed in a manner that indicates the individual is or has been the licensee's consumer;
  - (5) Any information provided by a consumer or otherwise obtained by the licensee in connection with collecting on an insurance policy or servicing a policy; and
  - (6) Information from a consumer report.
- (e) Personally identifiable financial information does not include:
  - (1) A list of names and addresses of customers of an entity that is not financial institution;
  - (2) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses; and
  - (3) Health information

**Producer** means the particular broker or agent dealing directly with the party seeking insurance.

**Publicly available information** means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (a) Federal, State, District of Columbia or local government records;

- (b) Widely distributed media;
- (c) Disclosures to the general public that are required to be made by Federal, State, District of Columbia or local law;
- (d) Publicly available information contained in government records includes information contained in government real estate records and security interest filings; or
- (e) Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or an internet site that is available to the general public without requiring a password or similar restriction. An Internet site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

Persons desiring to comment on these proposed rules should submit comments in writing to Ms. Leslie Johnson, Hearing Officer, Department of Insurance and Securities Regulation, Office of Legal Affairs, 810 First Street, N.E., Suite 701, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the D.C. Register. Copies of these rules and related information may be obtained by writing to the address stated above.